

# ZONING RECLASSIFICATION APPLICATION

## Harford County Board of Appeals

Bel Air, Maryland 21014

JUN 27 2007

Shaded Area For Office Use Only

Case No. 168

Date Filed 6/20/07

Hearing Date \_\_\_\_\_

Pre-Conf. \_\_\_\_\_

Receipt \_\_\_\_\_

Fee \$800.00

### Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

### Petitioner

Name MOB Prospect LLC Phone Number \_\_\_\_\_ Call Attorney \_\_\_\_\_

Address 139 North Main Street Suite 101 Bel Air MD 21014  
*Street Number Street State Zip Code*

Property Owner MOB Prospect LLC Phone Number \_\_\_\_\_ Call Attorney \_\_\_\_\_

Address 139 North Main Street Suite 101 Bel Air MD 21014  
*Street Number Street State Zip Code*

Contract Purchaser N/A Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
*Street Number Street State Zip Code*

Attorney/Representative John J. Gessner, Esquire Phone Number (410) 893-7500

Address 11 South Main Street, P.O. Box 1776 Bel Air MD 21014-7776  
*Street Number Street State Zip Code*

## Land Description

Address and Location of Property (with nearest intersecting road) \_\_\_\_\_

Prospect Mill Road

Subdivision \_\_\_\_\_ Lot Number \_\_\_\_\_ Acreage/Lot Size 3.393 AC Election District 3

Existing Zoning AG Proposed Zoning R1 Acreage to be Rezoned 3.393 AC

Tax Map No. 41 Grid No. 2D Parcel P/O 588 Deed Reference JJR 6361/447

Critical Area Designation N/A Land Use Plan Designation Low Intensity

Present Use and ALL improvements: Vacant

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.

Example: Conventional, Conventional with Open Space, Planned Residential Development) \_\_\_\_\_

Residential

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

N/A If yes, describe: \_\_\_\_\_

Estimated Time Requested to Present Case: 30 minutes

## Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an

allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land uses, not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- (g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- (h) Private restrictions or covenants, if any, applicable to subject parcel.
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- (j) Availability of public water and sewer.

## Additional Information as Required by the Department of Planning and Zoning

- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.
- (f) Soils analysis.
- (g) Aerial photograph.

CASE 168 MAP 41 TYPE Rezoning

ELECTION DISTRICT 03 LOCATION Prospect Mill Road

BY MOB Prospect LLC

Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 3.393 acres from a AG District to a R1 District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

MOB Prospect LLC  
BY: [Signature] 6-18-07  
Signature of Applicant/Owner Date

[Signature] 6/18/07  
Witness Date

Signature of Contract Purchaser/Owner Date

Witness Date

[Signature] 6/19/07  
Signature of Attorney/Representative Date  
John J. Gessner, Esquire

[Signature] 6/19/07  
Witness Date

[Signature] 6/26/07  
Director of Planning and Zoning Date  
SPG

Zoning Staff Date  
db

2 : 6/13/07  
7 : 7987  
hf2

**ATTACHMENT A-1**  
**FOR ZONING RECLASSIFICATION APPLICATION**  
**MOB PROSPECT LLC, PETITIONER**

The Zoning Reclassification Application, in Part IV, requests the following information. Petitioner's submission is as follows:

"(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation."

Petitioner: See attachment A-2, List of Property Owners.

"(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation."

Petitioner: The subject property ("Subject Property") consists of that parcel designated as Tax Map 41 P/O Parcel 588, on the records of the State Department of Assessments and Taxation ("SDAT"). Petitioner is also simultaneously requesting the rezoning of the parcels designated as Tax Map 41, Parcel 333 ("Parcel 333") and Parcel 385 ("Parcel 385"), also owned by Petitioner (collectively the "Other Parcels") from AG to R-1. All three (3) requests will be consolidated for hearing as all three (3) requests involve common subject matter. Petitioner's grounds for the application deal with not only the Subject Property but with the Other Parcels as well (the Subject Property and the Other Parcels are sometimes hereinafter collectively referred to as the "Parcels"). Petitioner

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alleges that a mistake was made as to the existing zoning of the Subject Property for the following reasons.

IN 1997:

1. ALL 3 PARCELS WERE IN DIFFERENT OWNERSHIP AND ZONED AG, AGRICULTURAL.
2. PARCEL 385 WAS OWNED BY THE MARYLAND STATE HIGHWAY ADMINISTRATION ("SHA")
3. PARCEL 333 WAS OWNED BY MINNICK
4. THE SUBJECT PROPERTY WAS ALSO OWNED BY THE SHA
5. THE PARCELS OWNED BY THE SHA (COLLECTIVELY THE "SHA PARCELS") WERE NOT INTENDED FOR DEVELOPMENT OF ANY KIND. THE SHA PARCELS WERE PURCHASED IN 1975 TO ACCOMMODATE ROAD CONSTRUCTION THAT DID NOT OCCUR
6. PARCEL 385 AND THE SUBJECT PROPERTY ARE LANDLOCKED. THEY HAVE NO ACCESS TO ROUTE 543
7. PARCEL 333 BY ITSELF IS NOT LARGE ENOUGH FOR PROPER RESIDENTIAL DEVELOPMENT

SINCE THE LAST COMPREHENSIVE REZONING IN 1997:

1. THE SHA HAS ABANDONED THE PROPOSED ROAD CONSTRUCTION PROJECT AND SOLD THE SHA PARCELS TO THE PETITIONER.
2. ALL 3 PARCELS ARE NOW OWNED BY THE PETITIONER
3. COMBINING PARCEL 333 WITH PARCEL 385 TOGETHER MAKES ONE PARCEL THAT IS APPROPRIATE FOR R-1 DEVELOPMENT (BUT STILL TOO SMALL FOR DEVELOPMENT WITH PERMITTED AGRICULTURAL USES )
4. PARCEL 333 AND PARCEL 385 CAN NOW BE DEVELOPED TOGETHER WITH ROAD FRONTAGE ON ROUTE 543
5. IT IS NOW POSSIBLE THAT THE SUBJECT PROPERTY CAN BE DEVELOPED IN CONJUNCTION WITH THE ADJOINING PARCEL TAX MAP 41, PARCEL 350

THE COUNTY COUNCIL COULD NOT HAVE KNOWN THAT THESE CHANGES WOULD TAKE PLACE. IF THE COUNTY COUNCIL HAD KNOWN OF THESE CHANGES IT WOULD NOT HAVE RETAINED THE AG ZONING ON THE SUBJECT PROPERTY. THE COUNTY COUNCIL MADE A MISTAKE IN THE LEGAL SENSE WHEN THE PROPERTY WAS ZONED AG IN THE LAST COMP REZONING.

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7 : 7987  
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"(2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change."

Petitioner: N/A.

"(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion."

Petitioner: The Subject Property is classified as "Low Intensity" on the 2004 Master Plan. The proposed R1, Urban Residential Zoning is consistent with that classification.

"(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

- (1) Location of Site.
- (2) Proposed nature and distribution of land uses, not including engineering drawings.
- (3) Neighborhood (as defined by the Applicant).
- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.

Petitioner: See Attachment A-3, entitled "Rezoning Exhibit-Concept Plan for the MOB Prospect, LLC Properties Tax Map 41, Parcels 333,385, and Part of 588" dated June 8, 2007, prepared by Morris & Ritchie Associates, Inc.

"(e) Previous individual rezonings and recommendations since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions."

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Petitioner: N/A

"(f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc."

Petitioner: See Attachment A-4, entitled "Environmental Features Map for the MOB Prospect, LLC Properties Tax Map 41, Parcels 333,385, and Part of 588" dated June 8, 2007, prepared by Morris & Ritchie Associates, Inc.

"(g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property."

Petitioner: See Attachments A-3 and A-5.

"(h) Private restrictions or covenants, if any, applicable to subject parcel."

Petitioner: None

"(i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted."

Petitioner: None.

"(j) Availability of public water and sewer."

Petitioner: Available.

**DAVID R. CRAIG**  
HARFORD COUNTY EXECUTIVE

**LORRAINE COSTELLO**  
DIRECTOR OF ADMINISTRATION



**C. PETE GUTWALD**  
DIRECTOR OF PLANNING & ZONING

## HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

September 26, 2007

### STAFF REPORT

### **BOARD OF APPEALS CASE NO. 168**

**APPLICANT/OWNER:** MOB Prospect LLC  
139 North Main Street  
Suite 101, Bel Air, Maryland 21015

**REPRESENTATIVE:** John J. Gessner, Esquire  
Gessner, Snee, Mahoney, & Lutche, P.A.  
11 South Main Street, P.O. Box 1776, Bel Air, MD 21014

**LOCATION:** Tax Map: 41 / Grid: 2D / Parcel: P/O 588  
Election District: Three (3)

**ACREAGE:** 3.393 acres

**ACREAGE TO BE REZONED:** 3.393 acres

**EXISTING ZONING:** AG/Agricultural District

**PROPOSED ZONING:** R1/Urban Residential District

**DATE FILED:** June 20, 2007

**HEARING DATE:** October 2, 2007

### APPLICANT'S REQUEST and JUSTIFICATION:

#### Request:

The Applicant is requesting to rezone 3.393 acres from AG/Agricultural District to R1/Urban Residential District.

*Preserving Harford's past; promoting Harford's future*

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410.638.3000 • 410.879.2000 • TTY 410.638.3086 • [www.harfordcountymd.gov](http://www.harfordcountymd.gov)

THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMAT UPON REQUEST.



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MOB Prospect LLC

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### Justification:

See ATTACHMENT 1.

### LAND USE AND ZONING ANALYSIS:

#### Location and Description of Neighborhood:

The subject property is located on the south side of Prospect Mill Road approximately 1,400-feet east of MD Route 543 (Fountain Green Road). A location map and a copy of the Applicant's site plan are enclosed with the report (Attachment 2 and 3).

The Applicant has submitted a map delineating their suggested neighborhood with the application (Attachment 4). The neighborhood defined by the Applicant is an appropriate description and generally conforms to the neighborhood defined by the Department. However, the neighborhood defined by the Department extends further east to include all those properties on the west side of Thomas Run Road (Attachment 5).

#### Land Use – Master Plan:

The subject property is located on the south side of Prospect Mill Road east of MD Route 543. The predominant Land Use designations in the area are Agricultural, Rural Residential, Low Intensity and Medium Intensity. The Natural Features Map reflects Stream Systems and Sensitive Species Project Review Areas (SSPRA). The Neighborhood Center of Hickory is located approximately 1-mile northwest of the subject property. The subject property is located within the Development Envelope and is designated as Low Intensity which is defined by the 2004 Master Plan as:

*Low Intensity – Areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors' offices, and banks are examples of some of the nonresidential uses associated with this designation.*

Enclosed with the report are copies of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

#### Land Use – Existing:

The existing land uses generally conform to the intent of the Master Plan. The area predominately contains single-family residential dwellings, townhomes and agricultural uses. A bank and a drug store represent the commercial uses in the area which are located at the intersection of MD Route 543 and MD Route 22. The C. Milton Wright High School is located approximately one-half mile south of the subject property.

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MOB Prospect LLC

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The subject property is irregularly shaped, contains 3.393 acres and does not have any road frontage. The topography within this area ranges from rolling to steep, especially near the stream valleys. The subject property is moderately sloping from the north to the south and is densely wooded. Enclosed with the report is a copy of the topography map and the aerial photograph (Attachments 8 and 9).

The lots that abut the subject property to the north, east and west are improved with single-family residential dwellings. The subject property is bordered to south by an open space parcel located in the Village of Thomas Run development. This rezoning request accompanies two other rezoning requests (Case Nos. 166 and 167). The property that is the subject of Case No. 166 is located approximately 1,200-feet to the west. The property that is the subject of Case No. 167 is located approximately 350-feet east of the subject property. Enclosed with the report is a site photograph (Attachment 10).

### Zoning and Zoning History:

#### Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning includes RR/Rural Residential District and R1 and R2/Urban Residential Districts. Business zoning includes RO/Residential Office District, B1/Neighborhood Business District and B2/Community Business District. There are also AG/Agricultural zoned parcels that are generally located along Prospect Mill Road. The subject property is zoned AG/Agricultural District as shown on the enclosed copy of the Zoning Map (Attachment 11).

#### Zoning History:

The subject property has remained zoned AG/Agricultural District since 1957 (Attachments 12 - 15). The Applicant requested that the subject property be rezoned to R1/Urban Residential District during the 2005 review. The County Council voted to change the property to R1/Urban Residential District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached are copies of the 2005 zoning log and issues map (Attachment 16 and 17).

### **BASIS FOR INDIVIDUAL REZONING REQUEST:**

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the Courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

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### Substantial Change Argument:

The Applicants are not claiming that a substantial change in the neighborhood has occurred. The Department would agree that a substantial change in the neighborhood has not occurred since 1997.

### Mistake:

The Applicant states that, "The subject property ("Subject Property") consists of that parcel designated as Tax Map 41 P/O Parcel 588, on the records of the State Department of Assessments and Taxation ("SDAT"). Petitioner is also simultaneously requesting the rezoning of the parcels designated as Tax Map 41, Parcel 333 ("Parcel 333") and Parcel 385 ("Parcel 385"), also owned by Petitioner (collectively the "Other Parcels") from AG to R-1. 1. All three (3) requests will be consolidated for hearing as all three (3) requests involve common subject matter. Petitioner's grounds for application deal with not only the Subject Property but with Other Parcels as well. (the Subject Property and the Other Parcels are sometimes hereinafter collectively referred to as the "Parcels"). Petitioner alleges that a mistake was made as to the existing zoning of the Subject Property for the following reasons:

IN 1997:

1. ALL 3 PARCELS WERE IN DIFFERENT OWNERSHIP AND ZONED AG, AGRICULTURAL.
2. PARCEL 385 WAS OWNED BY THE MARYLAND STATE HIGHWAY ADMINISTRATION ("SHA")
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4. THE SUBJECT PROPERTY WAS ALSO OWNED BY THE SHA
5. THE PARCELS OWNED BY THE SHA (COLLECTIVELY THE "SHA PARCELS") WERE NOT INTENDED FOR DEVELOPMENT OF ANY KIND. THE SHA PARCELS WERE PURCHASED IN 1975 TO ACCOMMODATE ROAD CONSTRUCTION THAT DID NOT OCCUR
6. PARCEL 385 AND THE SUBJECT PROPERTY ARE LANDLOCKED. THEY HAVE NO ACCESS TO ROUTE 543
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4. PARCEL 333 AND PARCEL 385 CAN NOW BE DEVELOPED TOGETHER WITH ROAD FRONTAGE ON ROUTE 543
5. IT IS NOW POSSIBLE THAT THE SUBJECT PROPERTY CAN BE DEVELOPED IN CONJUNCTION WITH THE ADJOINING PARCEL TAX MAP 41, PARCEL 350

THE COUNTY COUNCIL COULD NOT HAVE KNOWN THAT THESE CHANGES WOULD TAKE PLACE. IF THE COUNTY COUNCIL HAD KNOWN OF THESE CHANGES IT WOULD NOT HAVE RETAINED THE AG ZONING ON THE SUBJECT PROPERTY. THE COUNTY COUNCIL MADE A MISTAKE IN THE LEGAL SENSE WHEN THE PROPERTY WAS ZONED AG IN THE LAST COMP REZONING."

The Applicant is requesting rezoning of the subject property from AG/Agricultural District to R1/Urban Residential District in conjunction with rezoning requests for two other parcels (Case Nos. 166 and 167). All three properties were under separate ownership prior to 2005.

The properties that are the subject of this case and Case No. 167 were previously owned by the State Highway Administration (SHA). During the mid 1970's, the State acquired numerous properties in the area to facilitate the proposed extension of the East-West Highway (MD Route 23). The State had planned to connect MD Route 165 near Jarrettsville to MD Route 22 and beyond. The initial phase of the East-West Highway construction was completed from MD Route 165 to US Route 1 near Hickory during the early 1980's. The State was unable to proceed with the second phase of the extension. MD Route 23 now ends at US Route 1 just west of MD Route 543. There are no current plans to further extend MD Route 23. Therefore, the State has surplused properties they owned in this area.

The properties that are the subject of this case and Case No. 167 were owned by the State until the Applicant acquired the properties in 2004 and 2005. The Applicant purchased the property that is the subject of Case No. 166 from the Minnick's in 2005. The State owned parcels have remained vacant and undeveloped since the 1970's. This creates a unique situation which would allow for the subject properties to be consolidated and eventually developed as a single development with only one access point on MD Route 543. The alternative would be that the subject properties would be developed independently, with potentially several access points on both Prospect Mill Road and MD Route 543. However, it is important to note that the Applicant must coordinate their efforts with the owner(s) of Parcel 350 in order to develop the property in a manner similar to their proposed concept plan. Parcel 350 is currently zoned R1/Urban Residential District and is located between Parcel 385 and Parcel 588.

The Department agrees that a mistake has occurred in the zoning of the property. The subject property, in conjunction with the properties associated with the accompany cases, were under separate ownership. The County Council could not have known during the 1997 Comprehensive Review that the Applicant would subsequently acquire all three parcels. It is the Department's opinion that the Council knew about the State owned parcels and that they would not be developed residentially. The proposed R1/Urban Residential District zoning would be consistent with the Land Use Plan and the surrounding residential uses in the area. The Department agrees

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that a mistake has occurred and the subject property should be rezoned to R1/Urban Residential District.

**ANALYSIS OF INDIVIDUAL ZONING REQUEST:**

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Plan shows the area designated as Low Intensity.

Impact on the neighborhood:

The requested rezoning would not adversely impact the neighborhood.

**COMMENTS FROM ADVISORY GROUPS:**

History Preservation Commission:

This property is not in a historic district and there are no historic sites on the property.


Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed the request at their meeting on September 12, 2007. The PAB voted 3-0 to recommend that the requested change in zoning be approved (Attachment 18).

**RECOMMENDATION and or SUGGESTED CONDITIONS:**

The Department of Planning and Zoning recommends that the request to rezone the subject property from AG/Agricultural District to R1/Urban Residential District be approved.

  
Shane Grimm, AICP  
Chief, Site Plans & Permits Review

  
Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning

SPG/ASM/jf